IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6498 of 1992

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DAYABHAI N PATEL - Petitioner(s)

Versus

STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :
MR SUNIL K SHAH for Petitioner(s) : 1,
Mr. MR MENGDEY, AGP for Respondent(s) : 1 - 3.
MR JITENDRA M PATEL for Respondent(s) : 4,
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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 14/09/2005

ORAL JUDGMENT

In this petition under Article 226/227 of the Constitution of India, the petitioner has prayed for an appropriate writ, order or direction quashing and setting aside the order passed by the Revenue Department of the State Government dated 8.6.1992 in

cancelling the agricultural exemption granted under Section 20 of the Gujarat Urban Land (Ceiling & Regulation Act), 1976 [hereinafter referred to as “the Act”] in respect of lands bearing Survey No. 164/2, 164/4 and 164/6 situate at Village Saijpur Bogha, Taluka and District Ahmedabad. It is required to be noted that by way of amendment, the petitioner has made certain averments with regard to allotment of land bearing Survey No. 164/6 admeasuring 2403 sq.mtrs. Of land in favour of respondent No.4 Ramesh Park Co.op Housing Society Ltd., however there is no prayer by the petitioner to quash and set aside the allotment in favour of respondent No.4 and therefore no relief can be granted in absence of any prayer to that effect. The sum and substance of the prayer as sought for in the present petition by challenging the order passed by the State Government is for a relief of withdrawal of exemption under Section 20 of the said Act.

2. There was agricultural exemption in favour of the petitioner under Section 20 of the Act. As it was found that there is breach of condition of the exemption under Section 20 of the Act a show cause notice was issued upon the petitioner to show cause why exemption should not be cancelled. It appears that the petitioner did not reply to the said show cause notice and did not participate in the said proceedings and therefore presuming that petitioner has nothing to say and has admitted that there is

breach of the condition of exemption under Section 20, the Deputy Secretary, Revenue Department, State of Gujarat, by impugned order dated 8.6.1992 withdrew exemption under Section 20(2) of the Act by holding that inspite of the fact that there was a condition not to transfer, alienate either by way of sale, mortgage and/or in any other manner whatsoever without prior permission of the Government and that the land was required to be used for agricultural purpose, the same has not been used for agricultural purpose and that the said land has been transferred and some construction has been made illegally. Being aggrieved and dissatisfied with the said order, the petitioner has preferred the present Special Civil Application.

3. As stated above, by way of amendment, it is submitted that the very land bearing Survey No. 164/6 admeasuring 2403 sq.mtrs. is allotted to the respondent No.4 under Section 23 of the Act and as the proceedings under Section 6(1) of the Act have not been finalized even after withdrawal of exemption under Section 20 the order passed under Section 23 of the Act is illegal. However, as stated hereinabove there is no prayer with regard to quashing and setting aside the order under Section 23 of the Act and therefore no relief can be granted to the petitioner with regard to challenging the order under Section 23 of the Act in favour of respondent No.4.

4. Shri Sunil K. Shah, learned advocate

appearing on behalf of the petitioner has vehemently submitted that the order passed by the State Government withdrawing exemption under Section 20 is absolutely illegal and no opportunity has been given to the petitioner and in fact there is no transfer and/or any breach of condition of the exemption. It is therefore requested to allow the present Special Civil Application by further submitting that the land bearing Survey No. 164/6 belongs to the petitioner which was admeasuring 3035 sq.mtrs., of land out of which without any final decision in the adjudication under Section 6, 2403 sq.mtrs., of land from the land bearing Survey No. 164/6 is allotted to the respondent No.4 which is illegal.

5. Shri Mengdey, the learned AGP has produced the entire file and has submitted that no land of the petitioner from the land bearing Survey No. 164/6 admeasuring 3035 sq.mtrs. has been allotted to the respondent No.4. So far as the challenge to the order passed by the State Government withdrawing exemption under Section 20 of the Act is concerned, it is submitted that as it was found that there is a breach of condition of the exemption a show cause notice was issued and no reply was given by the petitioner and therefore the impugned order has been passed after giving an opportunity which is not against the principles of natural justice and so

submitting requested to dismiss the present Special Civil Application.

6. Shri JM Patel, learned advocate appearing on behalf of respondent No.4 has submitted they are in possession of the land in question pursuant to the order passed by the State Government under Section 23 of the Act and some members have already put up construction and are residing there and some of the members have also put up half of the construction. It is also further submitted that in absence of any relief quashing and setting aside the allotment in favour of respondent No.4 under Section 23 of the Act the petitioner is not entitled to any relief to that extent and therefore it is requested to dismiss the present Special Civil Application.

7. Heard the learned advocates appearing on behalf of the parties. So far as the challenge to the order passed by the State Government dated 8.6.1992 withdrawing exemption under Section 20 of the Act is concerned, it is required to be noted that the agricultural exemption was in favour of the petitioner on certain conditions and as it was found that the petitioner has not used the same for agricultural purpose and has put up the construction illegally and there was a breach of condition of exemption, proceedings came to be initiated by the State Government by issuing show cause notice. Opportunity was given to the petitioner to reply to the same but as it is seen from the order the petitioner did not reply to the show cause to

represent his case and/or to controvert the allegation made in the show cause notice. Accordingly, considering the fact that the petitioner has nothing to say and the allegations in the show cause notice are not controverted the impugned order came to be passed. In view of the above it is not open for the petitioner now to contend that the impugned order is in breach of principles of natural justice. It is also required to be noted that the petitioner did not controvert the allegations in the show cause notice and therefore the allegations were treated to have been accepted by the petitioner. It cannot be said that the order passed by the State Government withdrawing the exemption under Section 20 is in any way illegal and/or against the principles of natural justice which requires to be quashed and set aside.

8. So far as the grievance made by the petitioner with regard to allotment in favour of respondent No.4 under Section 23 of the Act is concerned, as stated hereinabove, there is no prayer made by the petitioner to quash and set aside the said order. Therefore, no relief can be granted in favour of the petitioner in respect to allotment of land in favour of respondent No.4 under Section 23 of the Act. Even otherwise, it appears from the record, which I have perused, the land belonging to the petitioner from the Survey No. 164/6 admeasuring 3035 sq.mtrs., is not allotted to the respondent No.4 but

the land admeasuring 2403 sq.mtrs. is allotted from one another holder and the holding of the petitioner of the land bearing Survey No. 164/6 admeasuring 3035 sq.mtrs., is kept in tact. Under the circumstances also, so far as the petitioner is concerned, the petitioner cannot challenge the allotment in favour of respondent No.4 which is not from his holding.

9. For the reasons stated above, there is no substance in the present Special Civil Application and the same is required to be dismissed and is accordingly dismissed. Rule is discharged. Ad-interim relief stands vacated forthwith.

[M.R. Shah, J.]

RMR.